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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

Case No. 2:19-cv-1488

Hon. George H. Wu

**DECLARATION OF JOHN
FARNSWORTH**

Action Filed: February 28, 2019

Hearing Date: July 11, 2019

Time: 8:30 a.m.

Courtroom: 9D

*[Motion to compel arbitration or
transfer, Declaration of Jeffrey S.
Jacobson, filed concurrently herewith]*

Trial Date: None set

1 Comes now John Farnsworth, being of lawful age, and hereby declares under
2 penalty of perjury of the laws of the United States as follows:

3 1. I am a Vice President at Epic Games, Inc. (“Epic Games”). I have
4 worked for Epic Games since 2009. I have personal knowledge of the facts stated
5 herein and I am otherwise competent to testify. I submit this declaration in support
6 of Epic Games’ Motion to Compel Arbitration or to Transfer this case.

7 **I. Epic Games Background**

8 2. Epic Games, which developed and continues to develop the global hit
9 video game *Fortnite*, is headquartered in Cary, North Carolina.

10 3. Epic Games’ senior leadership team works principally at the Cary,
11 North Carolina headquarters or at nearby facilities, as do hundreds of other
12 employees.

13 4. At the time Plaintiff sued, *Fortnite* had two game modes: “*Battle*
14 *Royale*” and “*Save the World*.” Plaintiff’s Complaint concerns the programming,
15 functioning, and marketing of “Loot Llamas” in *Fortnite: Save the World*.

16 5. All of the Epic Games employees involved in the relevant decisions
17 concerning these issues, as well as other business practices of Epic related to the
18 Complaint’s allegations, work in or near the Cary, North Carolina, headquarters.

19 6. Epic’s records that are potentially relevant to the programming,
20 functioning, and marketing of Loot Llamas in *Fortnite: Save the World* are stored at
21 Epic’s headquarters.

22 **II. The *Fortnite* End User License Agreement**

23 7. From the time of *Fortnite*’s launch in the summer of 2017, all users had
24 to affirmatively agree to the *Fortnite* End User License Agreement (“EULA”)
25 before they could begin playing the game (in any mode and on any platform).

26 8. Every version of the *Fortnite* EULA in effect from the time the game
27 launched in the summer of 2017 through the present was approved by Epic

1 employees who work in North Carolina. Every version called for non-arbitrable
2 disputes to be heard in North Carolina and governed by North Carolina law.

3 9. When someone downloads *Fortnite* and wishes to begin playing, and
4 the time comes for the person to accept the EULA as a condition of playing, the
5 EULA is displayed on-screen for the user. The user must affirmatively accept the
6 agreement by checking a box that reads, “I have read and agree with the End User
7 License Agreement.” After clicking that box, the user must confirm a second time
8 by clicking an “Accept” button before playing.

9 10. Following the launch of *Fortnite*, Epic Games has periodically updated
10 the EULA. Epic Games advised users that it may update the EULA at any time:
11 “Epic may issue an amended Agreement...at any time in its discretion by posting
12 the amended Agreement...on its website or by providing you with digital access to
13 amended versions...when you next access the Software.” The EULA advised
14 persons accepting it that “if any amendment to this Agreement...is not acceptable to
15 you, you may terminate this Agreement and must stop using the Software.”

16 11. Epic Games last updated the EULA in March 2019. This version of the
17 EULA included a binding, individual arbitration agreement, which Epic Games
18 prominently called out at the top of the updated agreement.

19 12. Epic Games displayed the updated EULA to all users who logged on to
20 play *Fortnite* on or after March 15, 2019. A screen shot of that display appears on
21 the next page. This screen shot shows the first sections of the amended EULA,
22 including a boldfaced, all-capitalized statement about the addition of an arbitration
23 requirement for dispute resolution and users’ time-limited right to opt out of the
24 mandatory arbitration requirement.

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Fortnite® End User License Agreement

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of Epic's Software, including any Services you access or purchases you make through the Software. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, you may not download or use this Software.

In particular, we want to highlight some important terms, policies, and procedures in this Agreement. By accepting this Agreement:

1. You are also agreeing to other Epic rules and policies that are expressly incorporated into this Agreement. Please read them carefully.

Our [Privacy Policy](#) explains what information we collect from you and how we protect it. Our [Fan Content Policy](#) explains what you can do with Epic's Intellectual Property in the content you create.

2. You grant Epic a license to use whatever content you create using the Service. You can find more

3. You and Epic agree to resolve disputes between us in individual arbitration (not in court). We believe the alternative dispute-resolution process of arbitration will resolve any dispute fairly and more quickly and efficiently than formal court litigation. Section 12 explains the process in detail. We've put this up front [and in caps] because it's important.

THIS AGREEMENT CONTAINS A BINDING, INDIVIDUAL ARBITRATION AND CLASS-ACTION WAIVER PROVISION. IF YOU ACCEPT THIS AGREEMENT, YOU AND EPIC AGREE TO RESOLVE DISPUTES IN BINDING, INDIVIDUAL ARBITRATION AND GIVE UP THE RIGHT TO GO TO COURT INDIVIDUALLY OR AS PART OF A CLASS ACTION, AND EPIC AGREES TO PAY YOUR ARBITRATION COSTS FOR ALL DISPUTES OF UP TO \$10,000 THAT ARE MADE IN GOOD FAITH [SEE SECTION 12]. YOU HAVE A TIME-LIMITED RIGHT TO OPT OUT OF THIS WAIVER.

TO ENTER INTO THIS LICENSE AGREEMENT, YOU MUST BE AN ADULT OF THE LEGAL AGE OF MAJORITY IN YOUR COUNTRY OF RESIDENCE. YOU ARE LEGALLY AND FINANCIALLY RESPONSIBLE

I have read and agree with the End User License Agreement

ACCEPT

Complete later?

Dismiss

13. To proceed with playing the game, the user was required to first check the box that states "I have read and agree with the End User License Agreement," after which they were required to click the "Accept" button:

Fortnite® End User License Agreement

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of Epic's Software, including any Services you access or purchases you make through the Software. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, you may not download or use this Software.

In particular, we want to highlight some important terms, policies, and procedures in this Agreement. By accepting this Agreement:

I. You are also agreeing to other Epic rules and policies that are expressly incorporated into this Agreement. Please read them carefully:

Our [Privacy Policy](#) explains what information we collect from you and how we protect it.

Our [Fan Content Policy](#) explains what you can do with Epic's Intellectual Property in the content you create.

Our [Terms of Service](#) explain the rules for our websites.

2. You grant Epic a license to use whatever content you create using the Service. You can find more information in the User Generated Content section below.

3. You and Epic agree to resolve disputes between us in individual arbitration (not in court). We believe the alternative dispute-resolution process of arbitration will resolve any dispute fairly and more quickly and efficiently than formal court litigation. Section 12 explains the process in detail. We've put this up front (and in caps) because it's important:

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TO ENTER INTO THIS LICENSE AGREEMENT, YOU MUST BE AN ADULT OF THE LEGAL AGE OF MAJORITY IN YOUR COUNTRY OF RESIDENCE. YOU ARE LEGALLY AND FINANCIALLY RESPONSIBLE.

I have read and agree with the End User License Agreement

Complete later?

Dismiss

III. Steve Altes, on behalf of R.A., Accepted the EULA When R.A.'s *Fortnite* Account Was Created

14. Epic Games' records reflect that on October 8, 2017, a *Fortnite* account (the "Altes Account") was created with the e-mail address of Plaintiff R.A.'s father, Steve Altes, using a personal computer.

15. Before being able to play, the Altes Account affirmatively agreed to the *Fortnite* EULA on October 8, 2017 by checking the “agree” box and clicking the “accept” button in the manner described above.

1 16. A copy of the EULA accepted by the Altes Account on October 8,
2 2017 is attached hereto as Exhibit A.

3 17. Epic Games' records reflect that a user of the Altes Account soon after
4 set up two different payment profiles for in-game purchases. One used Steve Altes'
5 PayPal information and the other used Steve Altes' MasterCard.

6 18. Epic Games' records further reflect that, on March 18, 2019, at 8:47
7 PM, a user logged into the Altes Account accepted the updated version of the
8 *Fortnite* EULA—including its mandatory arbitration provision—by checking the
9 “agree” box and clicking the “accept” button in the manner described above. The
10 EULA was displayed on-screen to the user as shown above, and the user was
11 required to accept the agreement to continue playing *Fortnite*.

12 19. A copy of the EULA accepted by the Altes Account on March 18, 2019
13 is attached hereto as Exhibit B.

14 20. Epic Games did not receive a request to opt out the Altes Account from
15 the arbitration provisions of the EULA by April 18, 2019. Even though an opt-out
16 after that date would have been untimely, Epic Games has not received an opt-out
17 for the Altes Account as of the date of this declaration.

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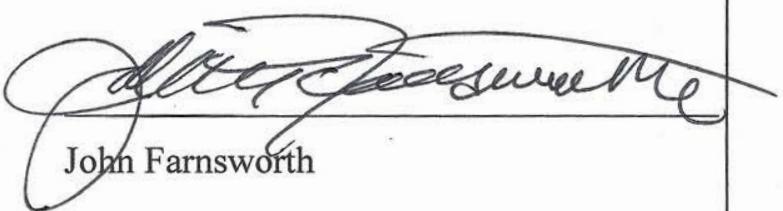
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1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

3 Executed on May 14, 2019.
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6 John Farnsworth
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